

No. 14716

United States
Court of Appeals
for the Ninth Circuit

JESUS GARCIA,

Appellant,

vs.

ALBERT DEL GUERCIO, Acting District Director of Immigration and Naturalization Service, Los Angeles, and U. L. PRESS, Officer in Charge,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Southern Division

FILED

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Certificate of Clerk	8
Names and Addresses of Attorneys	1
Notice of Appeal	7
Order to Show Cause, Proposed	5
Order Denying Petition	6
Petition for Writ of Habeas Corpus	3
Statement of Points on Appeal (U.S.D.C.) ...	7
Statement of Points on Appeal and Designation of Record on Appeal (U.S.C.A.)	9



NAMES AND ADDRESSES OF ATTORNEYS

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SWEET, AULT & WARNER,

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For Appellee:

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ANDREW J. DAVIS,

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Los Angeles 12, Calif.



In the United States District Court in and for the
Southern District of California, Southern Division

No. 1722-Civ. S.D.

In the Matter of the Application of:
JESUS GARCIA for a Writ of Habeas Corpus.

PETITION FOR A WRIT OF
HABEAS CORPUS

The petition of Jesus Garcia for a Writ of Habeas Corpus, respectively shows that:

I.

That petitioner was born on June 2, 1924, in San Diego, California, and was a citizen of the United States by birth.

II.

That petitioner is now in Tijuana, Baja California, Mexico, and claims that he is still a citizen of the United States and has a right to enter the United States by reason thereof and that such right has been denied by the United States Department of Justice, Immigration and Naturalization Service and the Officials thereof upon the ground that he is not a National of the United States.

III.

That in 1932, petitioner was taken to Mexico by his parents, where he remained until 1946. At which time he re-entered the United States as a citizen thereof.

IV.

That in 1947, petitioner went to Tijuana, Mexico, to see his [2*] mother and on September 16, 1947, a Board of Special Inquiry excluded the petitioner on the ground that he had forfeited his United States citizenship under Section 401(j) of the Nationality Act of 1940, as amended, by remaining outside the United States subsequent to September 27, 1944, until June, 1946, for the purpose of evading or avoiding training or service of the Armed Forces of the United States. The aforesaid hearing was unfair in that said hearing contained statements which were untrue and statements that were not made by petitioner herein and petitioner did not remain outside the United States for said purpose.

V.

That subsequent thereto, petitioner entered the United States as a citizen and remained until just prior to his application for admission at San Ysidro, on March 7, 1954.

VI.

That on April 6, 1954, a Special Inquiry Officer at San Ysidro, California, excluded the applicant from admission to the United States. That said decision was based in part on the aforesaid unfair hearing in 1947. That petitioner appealed from the decision of the Special Inquiry Officer and the decision of the Special Inquiry Officer was upheld by the Board of Immigration Appeals and that the said

*Page numbering appearing at foot of page of original Certified Transcript of Record.

decision of the Board of Immigration Appeals was also based upon the decision in 1947. That a final determination by the Attorney General has now been made, that petitioner is not entitled to admission to the United States.

VII.

That petitioner is unlawfully detained and restrained of his liberty by Albert Del Guercio, as Acting District Director of Immigration and Naturalization Service, Los Angeles, California; U. L. Press, as Officer in Charge, San Ysidro, California, and each and all of their agents and servants within the jurisdiction of this Court for the reason that your petitioner was a citizen of the United States by birth and is still a citizen of the [3] United States; that the hearing granted petitioner was unfair; that petitioner has a right to enter the United States; that said right has been denied by defendants, and each of them, who unlawfully restrain and detain petitioner and refuse him admittance at the port of San Ysidro, California.

Wherefore, your petitioner prays that a Writ of Habeas Corpus be issued out of this Court directed to Albert Del Guercio, as Acting District Director; U. L. Press, as Officer in Charge, and each and all of their agents and servants, requiring them, and each of them to bring before this Court forthwith the body of Jesus Garcia to do and receive what the Court then and there considers and then and there to show cause, if any they may have, for restraining and detaining Jesus Garcia.

Your petitioner further prays that the Court may

determine the legality of the restraint and detention of said Jesus Garcia and thereupon dispose of the case as law and justice may require.

/s/ JESUS A. GARCIA,

SWEET, AULT & WARNER,

By /s/ VERNE O. WARNER,

Attorneys for Petitioner.

Duly verified.

[Endorsed]: Filed February 17, 1955. [4]

[Title of District Court and Cause.]

PROPOSED ORDER TO SHOW CAUSE

Good cause appearing therefore, and upon reading the verified Petition on file herein;

It Is Hereby Ordered that the defendant, U. L. Press, appear before this court on the day of February, 1955, at 10:00 o'clock in the forenoon, to show cause, if any he has, why a Writ of Habeas Corpus should not be issued herein as prayed for, and that a copy of this order be served upon the said U. L. Press, Officer in Charge, San Ysidro, California, and that a copy of this order and a copy of the Petition be served upon the Assistant United States Attorney, his representative herein.

Dated: February, 1955.

.....,

Judge of the United States
District Court.

Order Denying Petition

It does not appear from the petition that the petitioner is committed, imprisoned or detained by anyone, or in the custody of anyone so as to authorize the issuance of a Writ of Habeas Corpus or an order to show cause therefor, under 28 USC, 2241, et seq.

It is therefore hereby ordered that the petition for the writ or for an order to show cause therefor is denied, and the case is dismissed.

Dated at San Diego, California, February 18, 1955.

/s/ PEIRSON M. HALL,
Judge.

[Endorsed]: Filed February 18, 1955. [6]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Jesus Garcia, applicant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order denying the Petition for a Writ of Habeas Corpus and the Order to Show Cause therefor entered in this action on February 18, 1955.

SWEET, AULT & WARNER,

By /s/ VERNE O. WARNER,
Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 28, 1955. [7]

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL

Appellant herewith presents the points upon which he claims the court erred:

1. In denying appellant's request for an Order to Show Cause.
2. In denying appellant's Petition for a Writ of Habeas Corpus.
3. In dismissing case on ground appellant was not in custody.

SWEET, AULT & WARNER,
By /s/ VERNE O. WARNER,
Attorneys for Appellant.

[Endorsed]: Filed March 25, 1955. [9]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 11, inclusive, contain the original:

Petition for a Writ of Habeas Corpus;

Order Denying Petition;

Notice of Appeal;

Statement of Points on Appeal;

Designation of Record on Appeal.

All in said cause, which constitute the transcript

of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 6th day of April, 1955.

[Seal] EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14716. United States Court of Appeals for the Ninth Circuit. Jesus Garcia, Appellant, vs. Albert Del Guercio, Acting District Director of Immigration and Naturalization Service, Los Angeles, and U. L. Press, Officer in Charge, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed April 7, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14716

JESUS GARCIA,

Appellant,

vs.

ALBERT DEL GUERCIO, etc., et al.,

Defendants.

STATEMENT ON POINTS ON APPEAL AND
DESIGNATION OF RECORD

Appellant in the above-entitled cause hereby adopts as his statement of points on which he intends to rely on this appeal the statement of points on appeal as it now appears in the transcript of the record herein.

Appellant further adopts the designation of record as it now appears in the transcript of the record herein.

SWEET, AULT & WARNER,

By /s/ VERNE O. WARNER,

Attorneys for Appellant.

[Endorsed]: Filed April 21, 1955.